IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5487 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESH @ SHAILIO @ RAJU POPATBHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

MR SHIKANDER SAIYAD for MR AJ SHASTRI for Petitioner

MS H.B. PUNANI AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/05/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Baroda City, on 15th of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as a dangerous person from 15th of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at subjective satisfaction. Firstly, the detaining authority relied upon five crimes registered against the petitioner for the offences punishable under the Indian Penal Code, and secondly, two in-camera statements, as recorded by the sponsoring authority on 1st of September, and 2nd of September, 2004, as verified by the detaining authority on 8th of September, 2004. The identity of the witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Out of five crimes registered against the petitioner, the first crime was registered before Sayajiganj Police Station, on 18th of June, 2004, for the offence punishable under Section 379 of the Indian Penal Code, wherein it was alleged that the petitioner was involved in theft of one Maruti Esteem Car. The second crime was registered against the petitioner before Baroda Taluka Police Station, on 12th of August, 2004, wherein it was alleged that the petitioner was involved in robbery of cash amount and mobile phone and the offences were registered against the petitioner under Section 392 and of the Indian Penal Code and under Section 25(a)of the Indian Arms Act. The third crime was registered against the petitioner again before Baroda Taluka Police Station, on 12th of August, 2004, for the offence punishable under Section 392 of the Indian Penal Code and under Section 5(a) (b-1) of the Indian Arms Act, wherein it was alleged that the petitioner was involved in theft of mobile phones as well as some ornaments. The fourth crime was also registered against the petitioner before Baroda Taluka Police Station for the same offence, on 17th of August, 2004, wherein it was alleged that the petitioner was involved in robbery of one gold chain. The fifth and last offence was registered against the petitioner before Adalaj Police Station, District Gandhinagar, for the offences punishable under Sections 307, 353 and 332 of the Indian Penal Code on 29th of July, 2004, wherein it was alleged that the petitioner attacked the complainant, was a police constable and was on duty. The detaining authority considered exhaustively

and thoroughly the investigation papers in the said five crimes and came to the conclusion that the petitioner was a habitual offender of committing offences under the Indian Penal Code.

4. Out of two in-camera statements, the first witness referred to an incident of 14th of July, 2004. When at about 7.30 p.m. the witness was passing near Subhanpura haveli, and he was approached by the petitioner and his accomplice on motorcycle. On suspicion that the witness was providing information to the police about the illegal activities of the petitioner, the witness was beaten by the petitioner and his accomplice. Though a crowd was gathered, but on account of fear of the petitioner, the crowd was dispersed. The public order was disturbed. The second incident is of 20th of July, 2004. At about 8.00 p.m. the witness was standing near T.B. Hospital and he was approached by the petitioner and one of his accomplice in one maruti car. The petitioner insisted that a chain which was with the petitioner should be purchased by the witness and to give Rs.10,000/- to the petitioner. On refusal, the witness was beaten by the petitioner in the public place and thereby disturbed the public order.

5. Relying upon the above materials, the detaining authority concluded that the petitioner was engaged in anti-social and illegal activities of committing offences like robbery, thefts, etc. In view of detaining authority, the petitioner was a dangerous person within the meaning of the PASA Act. The petitioner was ferocious, dangerous and of violent temperament. The detaining authority also concluded that the petitioner was in habit of administering threats to the innocent citizens and to beat them in executing his illegal activities. The detaining authority also concluded that the dangerous and illegal activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forth. The detaining authority, after considering the remedies available against the petitioner under the general law, reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PASA Act as dangerous person. Therefore, the detaining authority passed the order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

6. Learned advocate Mr.Shikander Saiyad forlearned Advocate Mr. A.J. Shastri for the petitioner and learned AGP Ms. Hansa B Punani for the respondents were

heard at length. The affidavit-in-reply as filed by the detaining authority, as placed on record by the learned AGP, is also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue whether the detaining authority applied mind properly to the materials placed before him in arriving at the subjective satisfaction.

8. The grounds of detention placed on record make it abundantly clear that the petitioner was in judicial custody in all the five cases registered against him, when the order of detention was executed and served upon him on 15th of September, 2004. The grounds of detention further reveal that in first case, the petitioner was arrested in a crime registered at Sl. No.5 on 30th of July, 2004, and thereafter in remaining four cases. The grounds of detention also reveals that right from 30th of July, 2004, till 15th of September, 2004, the date on which the order of detention was served upon the petitioner, the petitioner was in the judicial custody.

9. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was in judicial custody in all the five crimes registered against him at the time of execution of the order of detention, but, however, at any time, the petitioner was likely to move applications for bail in the said cases and after releasing on bail, the petitioner was likely to continue his illegal activities.

10. The facts of the present case are squarely covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, as reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and the detention order based on such material was held liable to be quashed.

11. True it is that, the order of detention can be passed and executed upon the detenu, even if, the detenu is in judicial custody. The judicial custody necessarily implied that the detenu is out of circulation and in

confinement. Therefore, in this respect the law is established that though the order of detention can be passed and executed, even if, the detenu is in custody, then the subjective satisfaction of the detaining authority that the custody of the detenu was likely to be ended, must be based upon the cogent materials. This is the ratio laid down by the Apex Court in the matter of Amritlal [supra]. In the present case, it becomes clear from the grounds of detention that the petitioner-detenu was arrested on 30th of July, 2004 in a crime registered against him before Baroda Taluka Police Station, right from 30th of July, 2004 till 15th of September, 2004, the detenu was in judicial custody in all five cases. The detenu had not even moved any bail applications in such cases, which becomes clear from the grounds of detention because the detaining authority mentioned in the grounds that the detenu was likely to move applications for bail in the said five cases. Though the Apex Court made it clear in above said decision that the filing of an application for bail is not itself a cogent material to infer that the detenu-petitioner was likely to be released on bail. In the present case, the petitioner had not preferred even applications for bail till the execution of the order of detention. The subjective satisfaction, therefore, arrived at by the detaining authority that firstly, the petitioner was likely to move applications for bail and again going further that on filing of such applications for bail, the petitioner was likely to be released on bail, is not based on any materials placed before the detaining authority, let alone any cogent material. Learned advocate for the petitioner makes a statement that subsequently, the petitioner filed applications for bail and he might have been released on bail. The point in issue is whether the detaining authority applied mind properly in arriving at subjective satisfaction. In the above view of the matter, it becomes clear that on two aspects, firstly for moving applications for bail and secondly releasing the petitioner on bail, no material at all appears to have been placed before the detaining authority and the detaining authority reached to the positive conclusion in this respect. In both the above aspects, the subjective satisfaction arrived at by the detaining authority is not valid, legal and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

12. In the result, the petition is allowed. The order passed by the Police Commissioner, Baroda City, on 15th of September, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is

hereby quashed and set aside. The detenu Shaileshbhai alias Sheliyo alias Raju Popatbhai Bharwad is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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